

सेवा में,

प्रमुख सचिव
आवास एवं शहरी नियोजन विभाग
उ०प्र० शासन, लखनऊ

विषय :- उ०प्र० नगर योजना और विकास (जल शुल्क का निर्धारण, उदग्रहण एवं संग्रहण) नियमावली 2020 (प्रारूप) में संशोधन करने हेतु सुझाव।

श्रीमन,

सादर अभिनन्दन

उपर्युक्त विषय के सम्बन्ध में सविनय निम्नवत निवेदन है:-

- 1- उ०प्र० नगर नियोजन एवं विकास अधिनियम, 1973 के अन्तर्गत शासन द्वारा उ०प्र० नगर योजना और विकास (जल शुल्क का निर्धारण, उदग्रहण एवं संग्रहण) नियमावली, 2020 (प्रारूप) बनायी गयी है।
- 2- उक्त नियमावली 2020 (प्रारूप) में संशोधन की आवश्यकता है।
- 3- उक्त नियमावली के प्रस्तावित प्राविधान मा० सर्वोच्च न्यायालय द्वारा दिये गये निर्णय-तमिलनाडू राज्य आदि बनाम पी० कृष्णमूर्ति, (2006) 4 SCC 57 के विपरीत है।
- 4- संलग्नक में अपेक्षित संशोधन एवं उसके आधारों का सविनय उल्लेख है।

अतः सविनय प्रार्थना है कि मा० सर्वोच्च न्यायालय के उपर्युक्त निर्णय के आलोक में नियमावली में संशोधन करने की अति कृपा करें।

आपसे यह भी सविनय अनुरोध है कि उक्त सुझावों को व्यक्तिगत रूप से आपके समक्ष रखने हेतु कोई समय व दिनांक भी नियत कर अवगत कराने का कष्ट करें ताकि हम लखनऊ आकर आपके समक्ष समस्त तथ्यों को रख सकें।

शुभकामनाओं सहित

कृते - आगरा सिटी रेडिको



दिनांक :- 12.02.2020

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Suggested Changes in the Draft UP Urban Planning & Development (Assessment, Levy and Collection of Water Fee) Rules, 2020			
Provision	Existing Provisions	Proposed Provisions	Justification for Change
Rule 2(e)	‘Water fee’ means the fees levied under section-15 upon the person or body for using water supplied by the Authority or the concerned Urban Local Body for building operation or construction of buildings.	‘Water fee’ means the fees levied under section-15 upon the person or body for using water supplied by the Authority or the concerned Urban Local Body for building operation or construction of buildings.	<p>(i) The definition of ‘water fee’ has been given in section 2(11) of the UP Urban Planning & Development Act, 1973 but the definition given in Rule 2(1)(e) of the draft Rules is sought to be widened by including in its ambit the supply of water by ‘<i>concerned urban local body</i>’ much against the statutory provisions.</p> <p>(ii) It is settled law that the Rules are delegated legislation and should confirm the Act.</p> <p>(iii) The Supreme Court in <u>State of TN and anr vs. P. Krishnamurti, reported in (2006) 4 SCC at pg. 57 in para 15(d)</u> held that a subordinate legislation is bad if: “failure to conform to statute under which it is made or exceed the limits of Authority conferred by the enabling Act.”</p> <p>(iv) In the draft Rules, the authority conferred by the Act is exceeded.</p> <p>(v) The provisions of the draft Rule offend S. 2(11) of the Act, which is the enabling provision.</p> <p>(vi) The scope of ‘water fee’ should not have been increased by including therein ‘the <i>Concerned Urban Local Body</i>’.</p> <p>(vii) The payment of the use of water supplied by Urban Local Body would be dealt with the provisions of the relevant law (eg the UP Water Supply and Sewerage Act, 1975 (UP Act No. 43 of 1975 etc.) and, as such, there is no need for the duplication of the power to collect water fee.</p>

Provision	Existing Provisions	Proposed Provisions	Justification for Change
Rule 3(1) <i>First Proviso</i>	Provided that water fee shall not be levied where no water is being supplied by the Authority or the concerned Urban Local Body.	Provided that water fee shall not be levied where no water is being supplied by the Authority or the concerned Urban Local Body.	The change is consequential to the suggested change in the definition of ‘water fee’, as given in Rule 2 (1)(e) of the draft Rules by excluding from its ambit ‘ <i>the concerned local authority</i> ’.
		New Sub-Rule (3) of Rule 3 be inserted as below:- <i>‘(3) Water fee, on being paid by an applicant, the Authority shall supply water to the applicant during the entire period of the validity of the development permit or building permit or the extended period, as the case may be.’</i>	<ul style="list-style-type: none"> (i) Water fee is for the ‘supply of water’ by the Authority to the applicant. (ii) It would be fair and reasonable that a responsibility of the supply of water is fastened upon the Authority, once water fee stands paid by an applicant. (iii) With the above intent, a new sub-rule (3) is suggested to be inserted in the scheme of Rule 3.
		New Sub-Rule (4) of Rule 3 be inserted as below:- <i>‘(4) The Authority shall constitute a committee to look after the affairs of the supply of water by it to its allottees of the scheme/colony, which shall comprise of the officer(s)/engineers appointed by the Vice-Chairman of the Authority and two of the allottees of the concerned scheme. This committee shall from time to time review and monitor the status of the proper supply of the water.’</i>	<ul style="list-style-type: none"> (i) It would be a proper step that the rules also contemplate for constituting a committee of every scheme/colony of the Authority, which would monitor the supply of water to the allottees, who have paid ‘water fee’. (ii) The suggested committee would help to redress the problems of supply of water by the Authority effectively. (iii) After payment of water fee, supply of water by the Authority in a satisfactory manner is most essential and <i>sine quo non</i>.

(4)

Provision	Existing Provisions	Proposed Provisions	Justification for Change
Rule 4(1)	<p>(1) In case of Development Permit: Where an application is submitted to the Authority for obtaining development permit on a plot or land parcel with an area of 3000 square meters or more situated within a scheme of the Authority, the water fee shall be assessed on the basis of gross area of the plot or land parcel.</p>	No Change Suggested	NIL
	Provided that water fee shall not be levied where an application is submitted to the Authority for obtaining development permit outside the scheme of the Authority.	No Change Suggested	NIL
		<p>Second Proviso to Rule 4(1) be added as below:- ‘Provided that water fee shall not be levied where the scheme or colony has been handed over to the concerned Nagar Nigam, Nagar Palika Parishad or Nagar Panchayat, as the case may be, for maintenance of their services.</p>	<p>(i) Water fee should not be levied by the Authority if the scheme/colony has been handed over by the Authority to the concerned Urban Local Authority.</p> <p>(ii) The present Rule 4(1) does not envisage the situation where the scheme/colony stands handed over by the Authority.</p> <p>(iii) To cover such situation, second proviso to Rule 4(1) is suggested to be inserted.</p>

Provision	Existing Provisions	Proposed Provisions	Justification for Change
Rule 5	(1) In case of development permit, the rate of water fee shall be Rupees 50/- (Rupees Fifty only) per square meter.	The following change in Rule 5(1) be made:- 'Rupees 50/- (Rupees Fifty only)' be substituted by ' Rupees 5/- (Rupees Five only) '	<ul style="list-style-type: none"> (i) Where '<i>development permit</i>' is issued for development of a land as a colony, the requirement of use of water is negligible as compared to the construction of a building pursuant to a '<i>building permit</i>'. (ii) It would not be proper to fix equal rates of the water fee for '<i>development permit</i>' (where a colony is to be developed) and the '<i>building permit</i>' (where a building is to be constructed). (iii) The rates of '<i>water fee</i>' for the '<i>development permit</i>' vis-à-vis the '<i>construction permit</i>' should be different. (iv) The rate of water fee for '<i>development permit</i>' should be not more and, therefore the rate of Rs. 5/- per sq. mtr. of the gross area of the '<i>development permit</i>' is suggested.
	(2) In case of building permit, the rate of water fee shall be Rupees 50/- (Rupees Fifty only) per square meter.	The following change in Rule 5(1) be made:- 'Rupees 50/- (Rupees Fifty only)' be substituted by ' Rupees 25/- (Rupees Twenty Five only) '	<ul style="list-style-type: none"> (i) The water fee is meant for reimbursing the cost of supply of water by the Authority. (ii) The cost of laying water lines and making necessary arrangements is included in the allotment price of the Authority. (iii) The proposed rate of Rs. 50/- per sq. mtr. is on higher side, which deserves to be rationalized by substituting the figure is Rs. 25/-

(6)

Provision	Existing Provisions	Proposed Provisions	Justification for Change
Rule 7	<p>(1) The amount of water fee levied in respect of an area which is not being developed or has not been developed by the Authority, shall be transferred to the Local Authority within whose Local limits such area is situated.</p> <p>(2) Water fee shall not be transferred in respect of such schemes or colonies which have not been handed over to the concerned Nagar Nigam, Nagar Palika Parishad or Nagar Panchayat, as the case may be, for maintenance of their services.</p>	<p>Rule 7 be deleted</p>	<p>(i) In view of the suggested definition of ‘water fee’, water fee would be leviable only where water is supplied by the Authority.</p> <p>(ii) As such, there appears to be no need to continue draft rule 7, as no need would arise for transfer of the water fee to the Local Authority.</p>

A Presentation by K.C. Jain, President, Agra City Redeco (Dated 12.02.2020)